IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND APPEAL NO.267 OF 2021

(Originating from the decision of the District Land and Housing Tribunal for Ilala at Ilala in Land Application No. 22 of 2020)

ALEX CHITAWALA ..... 1ST APPELLANT

HALFAN ALLY MUNGI ..... 2ND APPELLANT

VERSUS

REHEMA BENJAMIN HAULE ..... RESPONDENT

JUDGMENT

Date of last Order: 03.08.2022

Date of Judgment: 29.08.2022

A.Z.MGEYEKWA, J

The present appeal stems from the decision of the District Land and Housing Tribunal for Ilala at Ilala in Land Application No. 22 of 2020. The material background facts to the dispute are not difficult to comprehend.

They go thus: the respondent lodged a case at the tribunal against the appellants claiming land ownership. The respondent claimed that she is the lawful owner of the suit land which is located at Chanika Ngumukazi Vikongoro, Ilala District in Dar es Salaam. She testified to the effect that she bought a plot from Mohamed Gia Awilombe in 2003 and constructed a house in 2019 and todate she is residing in the said suit premises.

The respondent complained that the appellant invaded her plot and started to construct a house. The respondent prayed to be declared the lawful owner of the disputed property and the respondents be declared trespassers. The appellants also claimed that they are the lawful owner of the suit land measuring ¼ acre. They claimed that they bought the suit land from the same person Mohamed Gia Akwilombe in 2015.t The District land and Housing Tribunal decided the matter in favour of the respondent and ordered the appellants to vacate the suit land.

Aggrieved, the appellants appealed before this court against the decision of the District Land and Housing Tribunal for Ilala and raised five grounds of grievance as follows:-

1. *That the Chairman of the District Land and Housing Tribunal for Ilala erred grossly both in Law and facts by not considering the*

respondent's evidence being sufficient cause to warrant passion hence reaching to unfair and unjust decision.

2. *That the Chairperson erred in law and fact by holding that there was no like hood for the respondents to succeed in the application as the suit land was legally sold to the Respondent n the year 2003 without there being sufficient evidence to that effect.*
3. *That the Chairman erred in law and facts by determining the un-surveyed land which in fact measures quarter acre i.e. [1/4] and not half acre hence Judgment and Decree is null.*
4. *That the Chairperson of District Land and Housing Tribunal erred in law and facts by entertaining mere copy of the report of lost "Hati" from Village Office without proof of the same as if sale was conducted and witnessed by their office, a copy of it could be extracted from their records.*
5. *That the trial Honourable Chairperson erred in law and facts disputed land by way of purchase from previous legal owner one Muhammed Gia in 2005.*

When the matter came up for hearing on 3rd August, 2022 the 1st appellant appeared in person and the respondent enlisted the legal service

of Mr. Deogratus Tesha holding brief for Mr. Jerry Kaloma, learned counsel. The Court acceded to the respondent's proposal to have the matter disposed of by way of written submissions. Pursuant thereto, a schedule for filing the submissions was duly conformed to.

In his written submission, Mr. Deo opted to combine the second and fourth grounds and argued the first, third, and fifth grounds separately. In support of the first ground, the appellants' counsel began by tracing the genesis. He submitted that the history of the appellants in acquiring the suit land and documents tendered was crystal clear, however, the Chairman disregarded their testimonies and documents tendered at the tribunal. Mr. Deo blamed the Chairman for reaching an unjustifiable judgment while the appellants' evidence was heavier. The appellants' counsel invokes this Court's jurisprudence in the case of **Hemed Said v Mohamed Mbilu** (1984) TLR 113.

On the second and fourth grounds, Mr. Deo contended that the evidence adduced by the respondent was weak and unreliable and at any rate could not convince the tribunal to come up to a conclusion that the respondent is the owner of the suit land. He added that the respondent relied on the statement that the documents were destroyed in a fire tragedy. It was his

view that the respondent's evidence was not enough to prove whether he bought the suit land in 2003. He insisted that the respondent was required to tender a sale agreement to support her allegations.

Mr. Deo went on to submit that PW1 and PW2 testimonies are contradictory. He added that PW1 testified that immediately after buying the suit property she constructed an unfished house and there was no evidence that she took care of the half-constructed house. He claimed that the respondent did not call neighbours, or local government leaders to testify at the tribunal. He added that the letter (Exh.P1) only introduced her to the local government leader.

He argued that the respondent did not tender any loss report to prove that the sale agreement was destroyed by fire. The learned counsel for the appellant continued to submit that PW2 testified to the effect that he introduced the respondent to the vendor in 2003. He blamed the respondent for failure to call the material witness, thus the Chairman was supposed to draw an adverse inference against the respondent. Fortifying his submission he cited the case of **Hemed Said** (supra), the court held that:-

" ...where, for undisclosed reasons a party fails to call a material witness on his side, the court is entitled to draw an inference that if the witnesses were called they would have given evidence contrary to party's interest."

Arguing for the third ground, the counsel for the appellant contended that the appellants testified to have bought 1/4 acre but the Chairman did not establish the size of the disputed land if it was 1/4 acre or not. He lamented that the Chairman determine the matter partly on 1/2 acre and left behind the fate on 1/4 acre. He went on to submit that on the issue of whether the respondent was the lawful owner, the Chairman was supposed to establish the owner based on the size of the suit land before establishing the issue of ownership. Mr. Deo asserted that the appellants adduced evidence based on 1/4 acre and the respondent testified on 1/2 acre.

Submitting on the fifth ground, the learned counsel for the appellant contended that the appellants proved their case on how they came to the possession of the disputed land. He added that the 2nd appellant tendered a sale agreement witnessed by the Street Village Government Chairman in 2005. The learned counsel for the appellant stated that the form of sale

of agreement is the same and the 2nd appellant had the same form which he obtained from the Street Government.

On the strength of the above submission, Mr. Deo beckoned upon this court to allow the appeal with costs.

In reply, the respondent on the third ground contended that the Chairman evaluated the evidence tendered at the tribunal by both parties and there was no dispute that the respondent purchased the suit land in 2003 and the appellants bought their suit land in 2005. To buttress his contention he cited the case of **Rehema Ally Mdoe v Theonest Byaragaba Ruganisa**, Land Case No. 288 of 2017. He submitted that the law is settled that a civil case must be proved on the balance of probability he cited section 3 (2) of the Evidence Act, Cap.6 [R.E 2019].

The learned counsel went on to submit that the appellants' testimonies were not backed by any evidence. He stated that the general rule is that he who alleges must prove. Fortifying his submission he referred this court to sections 110 and 111 of the Evidence Act, Cap.6 [R.E 2019] and the case of **Hemed Said** (supra). It was his submission that the evidence on record shows that the respondent's evidence was heavier than the evidence of the appellants. He added that the appellants did not challenge

the letter tendered by the respondent thus in his view the said document was tangible evidence. The learned counsel went on to submit the averment that PW2 introduced the respondent to the vendor's son in 2003. It was his submission that this does not apply since it was upon the appellants to inform the tribunal how material or important.

The learned counsel for the respondent continued to argue the third ground is baseless and the witnesses' testimonies were not contradictory since the respondent's evidence was heavier compared to the appellant's evidence. He added that contradictions by a witness or between witnesses are something that cannot be avoided.

On the fifth ground, Mr. Jerry contended that the effect that the 2nd appellant tendered a sale agreement witnessed by the Street Chairman is not valid since tendering and admissibility of documents are two different things, and the appellants have not shown the relevancy of the said documents. He added that the sale of agreement was acknowledged after knowing that the respondent has reported the dispute to the Street Government. He added that the general rule is that who alleges must prove and there is no doubt that the respondent's evidence adduced at the trial tribunal was heavier than the appellants' evidence. He added that

the sale of the suit plot by the 2nd appellant to the 1st appellant was not valid because he had no title to pass since they were not the owner of the suit land. He referred this court to the Latin maxim *Nemo dat quod non habet* and section 27 of the Sale of Good Act. He added that the provision of the law stated that if the title of the vendor is defective and if this defective title is passed to the buyer, then the buyer's title would also be the same and he will not have rights on the goods thus in his view, the appellants could not transfer to the 2nd appellant what he could not have. To bolster his position he cited the case of **Farm Mohamed v Fatuma Abdallah** (1992) TLR 205.

On the strength of the above, Mr. Jerry beckoned upon this court to dismiss the appeal with costs.

I have revisited the evidence and submissions of both sides now, I am in a position to determine the appeal. In my determination, I will consolidate the first, second, fourth, and fifth grounds together because they are interrelated. Except for the third which will be argued separately.

Addressing the third ground, the appellant is complaining that the Chairman faulted himself by determining that the unsurveyed land which

was measured 1/4 acre was termed as 1/2 acres. I have read the District Land and Housing Tribunal Judgment and noted that the Chairman in his Judgment stated that allegations were not featured in the Chairman's final findings. In case the same were analysed from the evidence of the parties then the same does not go to the root of the case. Therefore, this ground is disregarded.

On the first, second, fourth, and fifth grounds, the appellant are blaming the trial Chairman claiming for failure to consider that the respondent's evidence was sufficient cause to warrant possession and that they bought the suit land from the previous owner of the suit land.

The records reveal that the vendor, the late Mohamed Gia is the one who sold the suit land to the appellants and respondent. The respondent in her testimony testified that all her belongings were destroyed by fire tragedy that occurred in 2011 and the Executive Officer of Chanika Ward wrote an introduction letter that Rehema Benjamin Haule was among the victims of the bombing eruption which occurred in Gongo la mboto whereas she lost all her belongings in the said fire tragedy. This letter suffices to show that the respondent has lost everything.

On the other hand, the 2nd appellant tendered a sale agreement dated 30th July, 2005 which shows that the 2nd appellant bought the suit land from Mohamed Gia Mwilombe to a tune of Tshs. 600,000/=. The respondent in her testimony testified to the effect that she bought the suit land in 2003. In my view, the 2nd appellant

The appellants called the vendor's son Juma who testified in favour of the appellants and he was among the vendor's witnesses. DW3 claimed that he did not know the respondent and had not met her while the respondent in her testimony testified to the effect that Juma is the one who informed her that his father was selling the suit land. The respondent's witness PW2 testified to the effect that he accompanied the respondent to buy a plot at Chanika and they met Juma Bwaya, the vendor's son who told them that his father was selling a plot.

In my considered view, the fact that the respondent lost all of her belongings and the same was supported by a document (Exh.P1), suffice to prove that she is legally in the suit land from the year when she bought the suit land in 2003. I am in accord with the counsel for the appellants that exhibit P1 does not prove ownership but the said documents prove that the respondent owned the suit properties that were inside her house

and all were burnt. I have also considered the fact that the respondent's witnesses testified in her favour.

Another factor that supports the respondent's testimony is the fact that the respondent invaded the suit land when the respondent was already living in the suit land. Had it been that the respondent found the appellants in the suit land then it could be possible that the appellants occupied the suit land first.

Therefore it is not true that the Chairman did not consider the fact that the appellant acquired the suit land by way of purchasing it from the previous owner because in his Judgment he made it clear that both parties bought the suit land from Mohamed Gia but the respondent bought the said suit land in 2003 and the appellants bought the same in 2005. Therefore the vendor had no good title to sell the suit land to the 2nd appellant. I find no reason to differ with the Chairman. It has been decided many times by this court and the Court of Appeal of Tanzania that one cannot sell a piece of land if he has no good title. In the case of **Faraha Mohamed v Fatuma Abdallah** (1992) TLR 205 the court held that:-

" He who does not have a legal title to the land cannot pass a good title over the same land to another."

See also the case of **William Gethari v Equity Bank**, Misc. Land Application No. 64 of 2021.

In the upshot, I find that the appeal has no merit, therefore, the same is dismissed with costs.

Order accordingly.

Dated at Dar es Salaam this date 29th August, 2022.

A.Z.MGEYEKWA

JUDGE

29.08.2022

Judgment delivered on 29th August, 2022 via audio teleconference whereas both learned counsels were remotely present.

A.Z.MGEYEKWA

JUDGE

29.08.2022